

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Kenneth Edgar Fox,	)	C/A No. 3:10-2199-CMC-PJG
	)	
Plaintiff,	)	
	)	
vs.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Rafael A. Douglas, and Officer Edgemon,	)	
	)	
Defendants.	)	
	)	

The plaintiff, who is self-represented, filed this civil action seeking relief against the named defendants. The defendants filed individual motions to compel seeking an order from the court directing the plaintiff to respond to their discovery requests. (ECF Nos. 34 & 36.) The court granted the defendants' motions by docket text order on February 9, 2011, directing the plaintiff to fully respond to the defendants' discovery requests and advising the plaintiff that failure to comply may result in sanctions including but not limited to dismissal of the Complaint, pursuant to Rule 37(d)(3) (incorporating the sanctions listed in Rule 37(b)(2)(A)(i)-(vi)) of the Federal Rules of Civil Procedure. (ECF No. 38.)

Defendant Douglas filed a motion to dismiss on February 23, 2011 and Defendant Edgemon filed a motion to dismiss on March 10, 2011. (ECF Nos. 45 & 52.) In their motions, the defendants seek dismissal of the plaintiff's Complaint due to the plaintiff's alleged failure to fully respond to their respective discovery requests.

Having reviewed the plaintiff's responses to the defendants' discovery requests, the court finds that the plaintiff has made a good faith attempt to respond to the defendants' discovery requests

and has substantially complied with the court's order. (ECF No. 49.) Therefore, the court finds that dismissal of this action is not appropriate pursuant to Federal Rule of Civil Procedure 37. The court notes that the plaintiff may be limited or bound by his responses as this matter proceeds.

**RECOMMENDATION**

Accordingly, the court recommends that the defendants' motions to dismiss be denied. (ECF Nos. 45 & 52.)



Paige J. Gossett

UNITED STATES MAGISTRATE JUDGE

May 11, 2011  
Columbia, South Carolina

*The parties' attention is directed to the important notice on the next page.*

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).